

Colorado Real Estate Exam Prep Workbook

Sixth Edition

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COLORADO BROKER EXAM PREP SIXTH EDITION

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PREPARING FOR THE EXAM PREP COURSE

Welcome to Exam Prep! Take these steps to get the most out of the course:

1. Read this section (Preparing for the Exam Prep Course) in its entirety.
2. Complete the true/false questions before you attend the course or view the online lectures.
3. Bring this book to class (or use with the online lectures).

It is very important to read this section before attending the course.

Exam Prep is the most accurate predictor of whether you are ready for the actual licensing exam. This course consists of two full-length practice exams (given in class or online), two workbooks, and two content review sessions.

Each session is 4 hours. Please bring two highlighters AND BOTH EXAM PREP BOOKS (NATIONAL AND COLORADO) to class or have these materials ready as you view the online lectures.

Session	Content
1	Pretest—national and state (classroom or online)
2	Review of state content and state pretest questions using the self-score answer sheet
3	Review of national content and national pretest questions using the self-score answer sheet
4	Posttest—national and state (online)

WHAT SHOULD YOU DO TO PREPARE FOR THE EXAM PREP COURSE?

Follow these steps to prepare for this Exam Prep course and to ensure a successful study program:

1. If you are taking the real estate licensing program in its entirety, you should complete and pass all course work and exams in the program before starting this Exam Prep course.
2. Complete all of the true/false questions in this book.
 - Start with your weakest topic.
 - Without looking at the answers, determine whether each statement is true or false.
 - If the statement is false, see if you can change it to make it true. For example:

Colorado is a country in South America.

F Colorado is a state in the United States in North America.
 - Before checking the answer, you should have answered “false” and changed the statement to “North America.”
 - If you know a statement is false but do not know how to make it true, mark the question as missed.
 - When you are done with all of the questions in a section, evaluate how you did on that topic. If you missed several questions, use the Exam Prep Strength and Weakness Indicator Chart on the following pages to find out where to review that topic.

- Once you have completed all of the true/false questions, retake the ones you got wrong. If you miss them again, mark them. Continue retaking the questions you got wrong until you don't miss any more questions and completely understand all the concepts.
 - The key is to always study what you do NOT know until you learn it.
- 3. Take the pretest. Classroom students will take it in class; OnDemand and Home Study students will take it online.
 - Use a self-score answer sheet from the appendix. You will need this sheet to keep track of your results because each pretest question will be reviewed during class. Bring this sheet with you to class or have it available while you watch the online lectures.
 - Use your results to complete the Exam Prep Strength and Weakness Indicator Chart to identify your strong and weak areas.
 - To improve on your weak areas, redo the true/false questions for those topics. For the true/false questions you answered correctly, make sure you got them correct for the right reason (not just a lucky guess). For the questions you missed, use your course materials to review the concept being tested. Keep taking these questions until you are confident that you understand the underlying concepts.
- 4. Attend the Exam Prep lectures (or view them online). BRING YOUR PRETEST ANSWER SHEET WITH YOU.
- 5. Take the posttest. Use the built-in Performance Tracker or a self-score answer sheet from the appendix. This will allow you to identify how you performed in each question category.
 - To improve on your weak areas, use the page references in the chart to review the relevant content. If you are taking the full licensing program, you can also use your other course materials for review. Start by reviewing your weakest areas first.
 - Again, be sure to redo the true/false questions for the topics you need to brush up on. Keep taking these questions until you are confident that you understand the underlying concepts.

Register for your licensing exam with PSI at www.psiexams.com.

EXAM PREP STRENGTH AND WEAKNESS INDICATOR CHART

To use this chart, enter the number you answered correctly in each topic area. For the topics you need to work on, use the page references to go back and review the content in the book. If you took the exams online, you can use the built-in Performance Tracker feature to identify your strengths and weaknesses.

Questions Answered Correctly	Topic Area	Exam Prep T/F Items	Exam Prep Outline	Colorado Real Estate Principles (Study the lecture outline, text, glossary, and review exams in each unit or section identified below.)
Pretest _____ Posttest _____	Duties & Powers of the Real Estate Commission (2 questions)	pp. 5–6	pp. 1–4	Course 2 Colorado Contracts and Regulations Unit 6
Pretest _____ Posttest _____	Licensing Requirements (5 questions)	pp. 11–12	pp. 7–10	Course 2 Colorado Contracts and Regulations Unit 6
Pretest _____ Posttest _____	Requirements Governing the Activities of Licensees (11 questions)	pp. 17–18	pp. 13–16	Course 2 Colorado Contracts and Regulations Unit 6
Pretest _____ Posttest _____	Additional Topics (7 questions)	pp. 25–26	pp. 19–24	Course 2 Colorado Contracts and Regulations Unit 5
Pretest _____ Posttest _____	Colorado Forms and Contracts (23 questions)	pp. 40–41	pp. 27–39	Course 2 Colorado Contracts and Regulations Units 2–5
Pretest _____ Posttest _____	Record Keeping & Trust Accounts (5 questions)	pp. 48–49	pp. 43–47	Course 4 Trust Accounts and Record Keeping
Pretest _____ Posttest _____	Closing and Settlement (10 questions)	pp. 58–59	pp. 51–57	Course 5 Closings and Settlement Sample Prorations
Pretest _____ Posttest _____	Brokerage Relationships (11 questions)	pp. 65–66	pp. 61–64	Course 2 Colorado Contracts and Regulations Unit 1
Total Pretest _____				
Total Posttest _____				

If you answered at least 60 questions (out of 74) correctly, you achieved a score of at least 80%.

WHAT SHOULD YOU DO IF YOU SCORE 80% OR HIGHER ON THE PRETEST?

If you score 80% or higher on the Exam Prep Pretest, you're doing well, but you may still need to focus on a few areas that you haven't quite mastered. You should do the following:

- Use the Exam Prep Strength and Weakness Indicator Chart or Performance Tracker (in the online exams) to identify the areas you still need to review.
- Attend the Exam Prep lectures or view them online, paying special attention to your weak areas.
- Take the Exam Prep Posttest at the end of the course.

WHAT SHOULD YOU DO IF YOU SCORE LESS THAN 80% ON THE PRETEST?

If you score 75%–79% on the Exam Prep Pretest, you're almost prepared to pass the licensing exam but need to focus on a few areas that you haven't quite mastered. You should:

- Attend (or view online) the Exam Prep lectures, paying special attention to the areas you identified as weak on the Exam Prep Strength and Weakness Indicator Chart or in Performance Tracker.
- After the Exam Prep lectures, take the Exam Prep Posttest if you feel prepared. If not, continue to study until you're ready.
- If you have already scheduled your exam, consider whether you will have enough time to study or if you should reschedule it.

If you score below 75% on the Exam Prep Pretest, don't panic! It just indicates that it may be beneficial for you to study more or retake some classes. Students who fail the Exam Prep tests are generally not successful when they take the licensing exam; however, if you score below 75% on the pretest, the following tips can help you improve:

- **Consider waiting to complete Exam Prep.** Often, spending additional time studying and completing or reviewing all the true/false questions will allow you to easily pass the pretest the second time. If you decide, along with the instructor, that you want to wait, give yourself enough time to study and prepare (typically no more than 3 to 4 weeks). **If you have already scheduled your test, consider rescheduling it.**
- **Consult your Self-Score Answer Sheet and the Exam Prep Strength and Weakness Indicator Chart** or Performance Tracker. These will help you identify the content areas in which you need to improve. Start studying your weakest area first.
- **Review real estate terms.** Familiarity with real estate terms is crucial. Go back through the key terms and glossary reviews in your prelicense study materials. If you do not know a term, make a flashcard for yourself. Once you have completed the process, you will have a stack of flashcards to review.
- **Study the true/false questions in your Exam Prep book.** You've probably reviewed these before, but try answering them again. If you've followed the steps, the concepts tested in the true/false questions will be more familiar. Be sure to conceal the answers as you study the questions. For every false statement, try to change the information to make it a true statement. This will further ensure that you understand the concept being tested.

WHAT SHOULD YOU DO IF YOU FAIL THE POSTTEST (SCORE LESS THAN 80% ON EITHER SECTION)?

You must retake the Posttest to complete your coursework and make sure you are ready for the licensing exam.

If you score below 80% on the Posttest, review all the sections and areas you missed using the Exam Prep Strength and Weakness Indicator Chart. Next, review the true/false questions for those areas. When you feel ready, retake the Posttest.

Remember, if you scored below 80%, you need to go back into the material. We can help you. You have access to all of Kaplan Professional Schools' resources to help you focus on the concepts that are difficult for you. Reread the appropriate units, attend selected class sessions, email our instructor help line at releadinstructorco@kaplan.com, and work through the review exams until you're ready to try the Exam Prep Posttest again.

WE ARE HERE TO HELP

The faculty and staff are committed to your success on the licensing exam. Please contact us anytime throughout your studies to let us know how you are doing or how we may be of service.

PREFACE

COLORADO-SPECIFIC PORTION REVIEW

The Colorado-Specific Portion contains 74 questions and reflects the current real estate laws, rules, and regulations. Topics covered in the Colorado-Specific Portion are listed here.

Duties and Powers of the Colorado Real Estate Commission (2 items)

Topics include general powers of the Commission and license law basics.

Licensing Requirements (5 items)

Topics include types of licenses and license rules.

Requirements Governing the Activities of Licensees (11 items)

Topics include broker advertising, employment practices, referral fees, personal assistants, appraisal, and seller-assisted down payments.

Additional Topics (7 items)

Topics include subdivisions, homestead, foreclosure, water rights, property taxes, assessments, credit laws, fair housing, and property management.

Colorado Forms and Contracts (23 items)

Topics include brokerage representation, seller and buyer listing contracts, contract to buy and sell real estate, forms used with the contract to buy and sell, addenda, attachments, additional provisions, and amendments.

Recordkeeping and Trust Accounts (5 items)

Topics include trust accounts, earnest money, and recordkeeping.

Closing and Settlement (10 items)

Topics include forms involved with closing, responsibilities of closing, and proration.

Brokerage Relationships (11 items)

Topics include definitions, designated brokerage, and disclosure.

UNIT 1

Duties and Powers of the Colorado Real Estate Commission

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

› Define the duties and powers of the Colorado Real Estate Commission.

I. GENERAL POWERS OF THE COMMISSION AND COLORADO REAL ESTATE BROKER LICENSE LAW BASICS

A. Purpose of the law

1. To **protect the public** of the state of Colorado in real estate matters

B. Landmark decision

1. *Conway-Bogue* decision: confirmed a limited right for a licensee to practice law by filling in standard contracts in Colorado
2. Under *Conway-Bogue*, licensees (group these together—always an “all of the following except” question)
 - a. **must be connected to the transaction,**
 - b. **must use standard and approved forms, and**
 - c. **may not charge a separate fee for preparing documents.**

C. Affiliated business arrangements per RESPA (Real Estate Procedures Settlement Act)

1. The title company
 - a. may prepare closing statements and legal documents, such as deeds and bills of sale.
 - b. The broker is also responsible for payment for the legal documents when the broker prepares documents for their clients (CP-7).
2. Regarding the relationship between brokers and title companies per RESPA and the affiliated business arrangement rules/forms (ABA),
 - a. brokers may **not accept referral fees** or inducements from title companies.

D. Who must have a real estate license

1. Colorado only issues broker licenses.
 - a. A license is required for any person who for compensation does any of the following:
 - i. Lists
 - ii. Leases
 - iii. Buys
 - iv. Exchanges
 - v. Auctions
 - vi. Options (unilateral contract with NO RECOURSE on promisor-owner)
 - vii. Negotiates
 - viii. Sells

E. Requirements for licensing

1. Candidates must
 - a. complete 168 hours of education,
 - b. pass the state licensing exam,
 - c. be able to present valid identification to prove they are lawfully present in the United States, and
 - d. **be at least 18 years old.**

II. INVESTIGATION, HEARINGS, AND PENALTIES

A. Investigation

1. The Commission, upon its own motion, and upon a verified written complaint, must investigate licensees who might be guilty of the following:
 - a. False advertising
 - b. Violating the Colorado Consumer Protection Act, an act that protects consumers from unfair sales, trade, or vendor practices
 - c. Failing to properly handle and manage other people's money or documents
 - d. Failing to provide a settlement closing statement
 - e. Failing to keep documents for **four years**
 - f. Paying a commission to an unlicensed person for work requiring a license (i.e., negotiating, advising, or drafting documents)
 - g. Dual contracting—is loan fraud in all states
 - i. Two purchase contracts are used—one for the price agreed to by the seller and the buyer and a second at a higher price given to the lender—in order for the buyer to receive an LTV that is higher than allowed.
 - h. Nondisclosure
 - i. **Licensees should disclose immediately, to a member of the public, if they have an interest in buying a property or if they are a principal in the sale of a property.**
 - **Brokers must disclose their license status in writing in any purchase contract in which they are a party.**
2. **The Commission can audit a broker's escrow account at any time, without notice, to verify that the broker has**
 - a. maintained records for four years,
 - b. not commingled funds (put the broker's funds together with a client's funds in same account), and
 - c. provided all purchasers and sellers with proper closing/settlement statements.
3. **The Commission has no authority and will not investigate**
 - a. ethics violations (this would be heard by an association of REALTORS® if both brokers are REALTORS®),
 - b. disputes between brokers (same as previous), or
 - c. criminal violations (in court).
 - i. **Criminal violations are handled by criminal courts (as well as damages).**

4. **The Commission will request that the licensee respond to the complaint and supply written documentation. Before receiving a response, the Commission**
 - a. cannot subpoena files or documents,
 - b. will not use lawsuits to obtain records, and
 - c. may **not** take a firm's records without cause. Any removal would occur after the investigation and not as part of the response.

B. Complaints

1. Following its investigation, the Commission will do one of the following:
 - a. Dismiss the complaint because of homicide, suicide, or HIV/AIDS
 - b. Issue a letter of admonishment (warning): **the lowest level of disciplinary action**
 - c. Send the complaint to **the administrative law judge who decides if there is a violation of law and does not determine the penalty**

C. Penalties

1. If the licensee is found guilty by the administrative law judge, the Real Estate Commission
 - a. determines the penalty;
 - i. Imposes a fine **not** to exceed \$2,500 for each separate offense, and/or
 - ii. **Censures, suspends, or permanently revokes** the license of those found guilty
 - iii. May NOT charge damages or impose jail sentences
 - b. **makes licensee records/status available to the public for inspection on the Real Estate Commission website.**
2. The Real Estate Commission is the only entity that can revoke (take back) a license.

UNIT 1 REVIEW QUESTIONS

1. Colorado real estate license law was enacted to protect brokers.
A. True
B. False
2. The Real Estate Commission must investigate every complaint against a licensee.
A. True
B. False
3. If a licensee violates the license law, the Commission may levy a fine of up to \$2,500.
A. True
B. False
4. Colorado brokers are allowed to prepare any type of legal document.
A. True
B. False
5. The Real Estate Commission's discipline of licensees may include a fine, public censure, license suspension, or license revocation.
A. True
B. False
6. The Real Estate Commission holds a public hearing to determine if a licensee is guilty of violating license law.
A. True
B. False
7. The Real Estate Commission will investigate a complaint regarding the failure of a licensee to disclose stigmatized property.
A. True
B. False
8. The Real Estate Commission will investigate a violation of the Consumer Protection Act.
A. True
B. False
9. The Real Estate Commission has authority over ethical conduct.
A. True
B. False
10. The Real Estate Commission has the authority to grant and revoke licenses.
A. True
B. False

UNIT 1 REVIEW QUESTION ANSWERS

1. **B** The statement is false. The law protects the public in dealing with licensed brokers.
2. **B** The statement is false. Only written complaints must be investigated.
3. **A** The statement is true.
4. **B** The statement is false. Brokers may prepare legal documents for real estate transactions if they use standard or approved forms.
5. **A** The statement is true.
6. **B** The statement is false. The hearing is held in court by an administrative law judge.
7. **B** The statement is false. Stigma is not considered a material fact under Colorado law, and the listing broker may not disclose it without consent of the seller.
8. **A** The statement is true.
9. **B** The statement is false. The National Association of REALTORS® has a code of ethics for its members.
10. **A** The statement is true.

UNIT 2

Licensing Requirements

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

- › Explain the real estate licensing requirements in Colorado.

I. TYPES OF LICENSES

A. Three levels of licensing

1. Employing broker

- a. Employs broker associates (brokers) and is responsible supervising them)

2. Independent broker

- a. Has two or more years of active experience
- b. Works alone
- c. Cannot hire or supervise any other brokers

3. Associate broker, broker associate, broker, licensee, employed broker, and designated broker (all terms are synonymous)

- a. Most licensees in the state of Colorado have this title (75%–80%).
- b. Two years or less of active real estate experience, or more than two years if decided to remain as a broker who works under an employing broker (they must work under an employing broker for at least two years): 75%–80% of brokers.

II. LICENSE RULES

A. License renewal and CE requirements

1. Licenses must be renewed every three years.
 - a. **All licenses expire on December 31 of the third year.**
2. To have their licenses renewed, brokers must complete 24 hours of continuing education (CE):
 - a. **12 hours must be the Commission's Annual Commission Update (ACU) course**
 - b. **12 hours of electives complete the requirement.**
 - i. For example, **the National Association of REALTORS® (NAR) ethics class**
 - c. The following do not count toward the 24 hours:
 - Personal marketing
 - Brokerage firm orientation
 - Exam prep
 - d. **Brokers may take and pass only the Colorado state portion of the licensing exam, which counts for all 24 hours in a three-year renewal cycle (licensees only need to take the national portion of the test once.**
 - e. Brokers who choose inactive status have to complete all 24 hours before reactivation of their license.
3. A licensee who has completed all CE but does not renew the license on its anniversary date **will have an active license but may not practice real estate or receive a commission** until the fee is paid.
 - a. The licensee has 31 days after the anniversary date to pay without penalty.
 - b. **After 32 days, the licensee will have to pay the renewal fee plus a reinstatement fee of one-half of the renewal fee.**
4. If a licensee lets the license lapse (does not renew), then the licensee must take a reactivation course or go back to real estate school in order to pass both the Colorado and the national portions of the state exam.
 - a. Do not let your license expire; make it inactive on the RE Commission website.
5. Broker associates must have an office open to the public. The employing broker's office meets this requirement.
6. Nonresident licensees must
 - a. have an office in their home state;
 - b. agree to keep all trust funds in a Colorado depository/bank; and
 - c. accept legal action in Colorado.

B. Who does NOT need a real estate license when practicing real estate transactions?

1. **A corporate employee leasing mineral rights**
2. **A corporation buying and selling real estate**
3. A public official in the conduct of the official's duties (public trustee)
4. Persons acting on their own behalf (for sale by owner-seller)
5. A regularly salaried employee of the owner of an apartment building or complex acting as an onsite manager
 - a. They must report to the owner and may not negotiate terms of leases
6. A regularly salaried employee of a new home builder: onsite sales person (if they have a license, it must be inactive to work for a builder in Colorado)

C. Business opportunity

1. **Must have a real estate broker license if the transfer involves the sale of real estate or transfer of a lease interest**
2. **Like all listings, must have a definite termination date**

D. Real estate options and securities

1. A real estate broker license is required to sell **real estate** options.
 - a. Employees of corporations selling options **do not need a real estate license**.
2. To sell real estate securities, a **securities license** is required.

E. Transfer, inactive license status, and temporary license

1. If a licensee changes firms, the licensee and the employing broker must notify the Commission if the licensee changes firms.
2. If a **brokerage firm** changes its address/business location without notification, all licensees will be inactivated, even if an individual licensee notified the Commission.
3. Inactive licensees **may not** perform any activities requiring a license (like students today).
 - a. Inactive brokers do not need an office or **errors and omissions insurance**.
 - b. Inactive brokers may perform unlicensed duties, such as onsite property management or salaried new home sales.
4. Temporary hardship license
 - a. A corporation or other business entity wishing to act as a brokerage must appoint a qualified broker to represent the firm as the principal (employing) broker.

- b. If the qualified broker cannot continue in that position and no other qualified broker is available, the Real Estate Commission may issue a **temporary hardship license** to any active Colorado broker for up to 90 days until a fully qualified broker can be found.
- c. The person who is given the hardship license must have a broker's license and **at least two years of active experience**.
- d. A sole-proprietor brokerage cannot receive a hardship license because only the sole proprietor may function as the principal broker.

F. Errors and omissions insurance

1. Required for licensed corporations and limited liability companies

- a. **Not required for inactive licensees, partnerships buying their own real estate, or utility companies buying rights-of-way**
- 2. Claims are not reported to the Real Estate Commission, but the Commission must approve the insurance company
- 3. **Must be renewed every year on December 31**

G. Disclosure of Conflict of Interest or Licensed Status. Rule 6.17

- 1. Brokerage Firms and Brokers have a continuing duty to disclose, in writing, any know conflict of interest that may arise in the course of any real estate transaction
 - a. Broker sells, buys, leases real property
 - b. Broker engaged in Property management services
 - c. Broker has ownership, financial or familial interest associated with the selection or use of a particular business or vendor.

UNIT 2 REVIEW QUESTIONS

1. An inactive broker may solicit buyers and sellers to sign listing agreements.
A. True
B. False
2. A broker with an inactive license needs errors and omissions insurance.
A. True
B. False
3. To sell options in real estate, one needs a securities license.
A. True
B. False
4. An inactive broker does *NOT* need to maintain an office open to the public.
A. True
B. False
5. All active brokers must have errors and omissions insurance.
A. True
B. False
6. Errors and omissions insurance is required only for brokerage firms.
A. True
B. False
7. When a brokerage firm changes its business location, the employing broker must notify the Commission.
A. True
B. False
8. An associate broker moving to a different brokerage firm will inform the Commission at the next license renewal.
A. True
B. False
9. To renew an active broker's license, each licensee must complete 24 hours of continuing education each year.
A. True
B. False
10. A broker may bypass all three years of required continuing education by passing the state portion of the broker licensing exam.
A. True
B. False

UNIT 2 REVIEW QUESTION ANSWERS

1. **B** The statement is false. An inactive broker may not do anything that requires a license.
2. **B** The statement is false. Only active brokers or those applying for an active license need errors and omissions insurance.
3. **B** The statement is false. A real estate license is required.
4. **A** The statement is true.
5. **A** The statement is true.
6. **B** The statement is false. E&O is mandatory for every active licensed broker and brokerage firm.
7. **A** The statement is true.
8. **B** The statement is false. The associate and the employing broker must notify the Commission immediately.
9. **B** The statement is false. Twenty-four hours is required over each three-year renewal period.
10. **A** The statement is true.

UNIT 3

Requirements Governing the Activities of Licensees

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

› Describe rules and requirements that govern the activities of licensees.

I. **BROKER ADVERTISING, EMPLOYMENT PRACTICES, AND REFERRAL FEES**

A. **Trade names**

1. There are no rules on the size of the trade name versus the broker's name in advertising.
2. **The brokerage firm's name, as registered with the Commission, must appear on all advertising.**
 - a. A broker associate's name, phone number, email, and other identifying items are allowed but **not required**.

B. **Supervision for broker associates (high level versus reasonable level)**

1. Reasonable supervision—brokers with two or more years of active experience
 - a. Must be given a brokerage firm office manual and receive, read, and sign it
 - i. The written office manual must have a method for designating brokers and what brokerage relationships are allowed to be offered in the brokerage firm.
 - b. In addition, all contracts must be reviewed

2. High level of supervision—brokers with less than two years of experience
 - a. Attending, training, or being available to answer questions for all closings
 - b. Does not require attending brokers' meetings with clients or mentoring them
3. An employing broker who is leaving town or otherwise not able to personally supervise may delegate supervisory authority to another **qualified broker (not an unlicensed individual)**, such as an office manager).

C. Employment status

1. There are two ways to be a licensee in Colorado: independent contractor or employee
 - a. Independent contractor
 - i. No income taxes or payroll taxes are withheld.
 - ii. Must have a signed independent contractor agreement
 - iii. No set schedule or paid vacations
 - b. Employee
 - i. A broker supervised by an employing broker may be an **employee for federal income tax purposes**.
 - ii. The employing broker **must withhold federal income tax and payroll taxes, such as Social Security**, from the paychecks of an employee licensee.

D. Commission rebates and referral fees

1. **Referral fees to out-of-state brokers must be only to active licensees with business offices.**
 - a. May pay for a name if the referrer is supplying only a name and has performed no activities requiring a license
2. A licensee may **rebate a commission** to a buyer or a seller as part of the broker's service; this is considered a **commission negotiation or renegotiation**.
 - a. Payment to buyers should be disclosed to the seller and should comply with RESPA and any HUD requirements.
3. A licensee may **not pay a fee to an unlicensed person** for performing any brokerage functions.

II. PERSONAL ASSISTANTS

A. Unlicensed assistants: limitations

1. **Unlicensed assistants may not be put in the position to act like a licensee.**
2. **They may not do anything that requires a real estate license, including the following:**
 - a. Negotiating

- b. **Independently drafting or filling in legal documents or approved contracts**
- c. Offering opinions, advice, or interpretations

B. Unlicensed assistants: abilities

1. **Hold an open house and hand out preprinted, objective information**
 - a. **But they may not give any information about the price, advice about the property, or the seller's confidential information.**
2. **Prepare a market analysis**
 - a. They **may not give an opinion of value**
3. **Measure square footage of a property**
 - a. The **method of measurement must be disclosed.**
4. **Sign checks on a trust account if authorized by the responsible broker**
 - a. **Just as any unlicensed person, such as an office manager, can**
5. Perform clerical duties, including gathering information for a listing
 - a. Distribute information on listed properties when such information is prepared by the broker or broker associate
 - b. Fill in a contract and deliver it
 - i. without providing any advice or opinions
6. Drive a buyer to a property

III. APPRAISAL AND SELLER-ASSISTED DOWN PAYMENTS (OTHERWISE KNOWN AS SELLER CONCESSIONS)

A. Appraisal

1. **There are three levels of appraiser licensing in Colorado.**
2. **Appraisers are typically hired by the lender.**
3. **Brokers doing a CMA or a BPO that is not being used as part of a listing or buyer representation agreement must state that they are not appraisers (Rule 6.12.).**

B. Rule 6.15: Sign Crossing (CP-3)

1. **A licensee cannot negotiate a sale, exchange, lease, or listing contract with an owner who has an active listing contract with another licensee.**
 - a. **If the property is currently listed for sale, and there is direct marketing, postcards, or letters that go out to a neighborhood, that marketing should have a disclaimer that states, "this marketing is not intended to list the property for sale."**

2. **Exception: if the owner approaches the licensee (the licensee did not initiate contact)**

- a. **A broker may negotiate and sign a listing agreement that begins after the expiration or termination of the existing listing.**

C. Seller-Assisted Down Payments (CP-30)

1. **For seller-assisted down payments, real estate licensees should do the following:**

- a. Note all seller-paid costs in all relevant documents.
- b. **Add to the MLS, in the Seller Concessions tab, that the seller contributed to closing costs or other down payment assistance for the buyer in the transaction.**
- c. Advise buyers and sellers to consult legal and tax counsel for advice on tax consequences.
- d. **Provide both the lender and the appraiser with the Contract to Buy and Sell, which will state in the additional provisions or the Financing Provisions paragraph, the seller contributions.**

NOTE: Title companies and the Real Estate Commission do not require these activities.

UNIT 3 REVIEW QUESTIONS

1. An employer may refuse to withhold Social Security taxes.
A. True
B. False
2. Broker associates may receive referral fees from out-of-state brokers without notifying their employing broker.
A. True
B. False
3. An unlicensed assistant may prepare and present a competitive market analysis for a seller.
A. True
B. False
4. An unlicensed assistant may show a property and provide further information about it as long as the unlicensed assistant knows the right answers.
A. True
B. False
5. An unlicensed assistant may measure a property and collect other information for marketing.
A. True
B. False
6. An unlicensed assistant may write and sign trust account checks.
A. True
B. False
7. An unlicensed assistant may renegotiate minor terms in a listing contract in the absence of a broker.
A. True
B. False
8. An unlicensed assistant may attend a closing in place of the broker.
A. True
B. False
9. An employing broker or mentor would be expected to attend all client meetings with a newly licensed broker
A. True
B. False
10. Employing brokers have a higher standard for supervision of newly licensed brokers than those with years of experience.
A. True
B. False

UNIT 3 REVIEW QUESTION ANSWERS

1. **B** The statement is false. An employing broker must withhold the taxes.
2. **B** The statement is false. All money must go through the brokerage firm.
3. **B** The statement is false. An assistant may prepare it, but it must be presented by a broker; the broker would need to identify the assistant as the preparer.
4. **B** The statement is false. An unlicensed assistant may provide access but may not provide additional information or give opinions.
5. **A** The statement is true.
6. **A** The statement is true. The employing broker remains liable for the money in the account.
7. **B** The statement is false. Negotiating is always beyond the authority of an unlicensed assistant.
8. **B** The statement is false. Designated brokers are to attend and verify the proper closing.
9. **B** The statement is false. An employing broker or mentor would be expected to train the broker and be available for closings.
10. **A** The statement is true.

UNIT 4

Additional Topics

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

- › Describe key issues in Colorado real estate regarding subdivisions, foreclosures, homestead, water rights, property taxes, assessments, credit laws, fair housing, and property management.

I. SUBDIVISIONS, FORECLOSURE, AND HOMESTEAD

A. Subdivisions—registrations

1. Any development of **20 or more residential** building sites or units requires registration.
2. **If not registered or approved by a regional, county, or municipal planning authority, the subdivision developer must register with the Real Estate Commission.**
3. Residential condominium conversions, time-share developments, and the conversion of apartment buildings to time-shares or condominiums requires registration.
4. **Campsite memberships are exempt.**

B. Foreclosure in Colorado (steps)

1. First, the lender files a Notice of Election and Demand (NED) with the public trustee.
2. Then, **the public trustee advertises** the foreclosure sale.
3. If there are **private trustees or seller carry transactions**, the deed of trust is **foreclosed in court**.

4. Right-to-cure

- a. To stop the foreclosure during the right-to-cure period, **the borrower must bring current all past-due payments and pay all lender fees.** The borrower does not have to pay off the full loan.
 - b. Upon filing of the Notice of Election and Demand, the foreclosure sale is scheduled. The right-to-cure period is determined by the property type.
 - i. For **nonagricultural property**, the sale must occur within **110 to 125 days.**
 - ii. For **agricultural property**, the sale must occur within **215 to 230 days.**
 - c. The public trustee holds the sale within these periods.
5. If the amount received at the sale was less than the lien, the lender can file for a **deficiency judgment.**
- a. A **default judgment** is not used in this type of legal action.
6. **A party who takes over a foreclosure and does not make payments but collects rent is guilty of equity skimming, which is a felony in Colorado.**

C. Homestead

1. **In Colorado, the homeowner's exemption is only on a principal or primary residence.**
 - a. Standard rights are \$60,000; it increases to \$90,000 if the homeowner is disabled or over 60 years old.
2. **Sellers who finance a property should act like a bank and**
 - a. **have the buyer waive the seller's homestead right,**
 - b. supply a mortgagee's policy, and
 - c. have an attorney create the finance documents.

II. WATER RIGHTS

A. Water rights: conveyance

1. Water rights in Colorado:
 - a. Real property conveyed by a deed
 - b. Do **not** automatically transfer with real property in Colorado—**not an appurtenance**
 - c. May be severed and sold independently from the land
2. **The most complex water rights tend to be on agricultural property and tied to irrigation canals.**

B. Doctrine of prior appropriation

1. **Governs Colorado water rights**
2. **Used in many in states where water is scarce.**
3. The **first user diverting to beneficial use** has the first claim (priority) on the water.

C. Well permits

1. **Provide the ability to use and maintain the water in a well**
2. **Are granted and regulated by the state engineer**
 - a. The state engineer is notified when a property with a well/well permit is sold.
3. Seller agrees to supply required information to Buyer about the well.
4. Buyer must, prior to or at Closing, complete a Change in Ownership form for the well.
5. If the well has not been registered with the Colorado Division of Water Resources, Buyer must complete a registration of existing well form for the well and pay the cost of registration.
6. If no person will be providing a closing service in connection with the transaction (Title Company), Buyer must file the form with the Division within sixty days after Closing.

III. PROPERTY TAXES AND ASSESSMENTS**A. Ad valorem taxes**

1. **Ad valorem (assessed) taxes are found on the tax certificate.**
2. Property taxes are effective January 1.
3. **Taxes may be paid in two halves on the last day of February and on June 15.**
4. If the first payment is made and the second one is missed, **interest accrues as of March 1.**
5. **If not paid in halves, the entire tax bill is due on April 30.**
 - a. If the payment is missed, interest accrues as of **May 1.**
6. Property taxes become a lien on the property on **January 1.**

B. Delinquent tax sale and redemption

1. Properties with delinquent property taxes may be purchased at a county tax sale.
2. The property owner can redeem property sold at a tax sale within three years after the sale or purchase.
 - a. If not redeemed, the purchaser of the delinquent taxes can obtain the title.

IV. CREDIT LAWS

A. Uniform Consumer Credit Code (UCCC)

1. **State law**
2. **Sets usury rates**
3. Sets credit or usury rate limitations for creditors (a lender charging more than these maximum amounts is guilty of **usury**.)
 - a. 21 percent maximum rate for creditors (0.21)
 - b. 45 percent maximum rate for noncreditors (0.45)

B. Uniform Commercial Code (UCC)

1. Requires **bulk sales** disclosures in the sale of goods of \$500 or more
2. Seller must disclose creditors.
3. **In Colorado, and many other states, the buyer will pay a business use tax on all inventory conveyed (trade fixtures).**

V. COLORADO FAIR HOUSING ACT

A. Key points

1. **FReSH CoRN plus margarine and salt**

Familial status

Race

Sex

Handicap

Color

Religion

National origin

Colorado law is more strict than national law.

B. Protected classes

1. Colorado adds **marital status**, creed, **sexual orientation**, and ancestry to the federal protected classes.
2. The Fair Housing Act applies to both residential and commercial properties.
3. The rules that are most strict (protect the consumer the most) take precedence, whether they are federal, state, or local.
4. Real estate professionals can never discriminate based on race.
5. Brokers may not use discriminatory language in advertisements (e.g., young professional woman).
 - a. **Ads should describe the property, not the people who live there.**

C. Property management

1. Property managers and their employees are also subject to fair housing rules.
2. Application requirements must be the same for all tenants.
3. Rules regarding disabled tenants include the following:
 - a. The property manager must allow **reasonable modifications** and make reasonable accommodations to the rules and regulations for someone who is disabled.
 - b. Disabled tenants, like all other tenants, may make reversible changes without permission **if the tenant pays for them (e.g., adding a ramp to the front of the house)**.
 - c. The tenant might be required to remove the modifications and repair any damages from them.
 - d. If a tenant becomes disabled, the manager must **accommodate** the disability and may not require the tenant to move.

D. Complaints

1. The Colorado Civil Rights Commission (CCRC) handles fair housing complaints.
 - a. **Parties have one year** to file a complaint with the CCRC.
 - b. Parties have **two years to go directly to court**.
 - i. These are the same as federal time frames.

VI. PROPERTY MANAGEMENT

A. Property managers

1. Property managers must be licensed.
2. They are concerned with finding quality tenants and making sure tenants do not create environmental issues for the property (e.g., meth use or meth labs, carbon monoxide, radon, asbestos, etc.)
3. Environmental impact studies show how a property should or could be used.
 - a. A PHASE II survey indicates what is going on in the soil or other environmental issues in a piece of land, lot, or property.
 - b. Property managers or listing agents would need to know this information or disclose it.
4. **A property manager is a general agent** of the property owner.
5. A property management agreement defines the relationship and must be signed by the **employing broker** (never the broker associate) for the firm.
 - a. When an employed broker (associate) manages property (even for a friend), the management agreement is signed by the employing broker and the employing broker handles the trust accounts.

B. Leases

1. Under the statute of frauds, leases of more than one year **must** be in writing to be enforceable.
 - a. Therefore, leases of less than one year do not need to be in writing, although this is not optimal or enforceable in court.
2. Lease notification times
 - a. Month to month: 10 days
 - b. **Tenancy at will: 3 days**
 - c. Estate for years: no notice required because a fixed time period
 - i. The timeline is given in the lease at the beginning; therefore, notice of termination is given at signing (the expiration date).

C. Accounts and security deposits

1. The property manager has **five business days** to deposit money received.
2. Associate brokers managing a property in which they have an interest need a separate account for those properties.
3. If an owners association (OA) terminates a management agreement, the employing broker/manager **must return all original records to the OA** without charge.

4. Security deposits must be held in a separate trust account.
 - a. The deposit must be returned in full or the tenant must be given an accounting of why the deposit was kept, within
 - i. **one month (30 days), or**
 - ii. up to **60 days**, if written in the lease.
 - b. Any money withheld must be accounted for.
 - i. Withholding for ordinary wear and tear is not allowed.
 - c. Failure to comply can cause the landlord to be liable for **treble (triple) damages**.
 - d. Funds belong to the tenants and are being held for them.
 - i. **If the management agreement does not state whether the owner or the broker will keep the security deposit, the broker must keep the funds in an escrow account or security deposit escrow account to protect the tenant.**
 - ii. The broker can turn the deposit over to the owner after notifying the tenant.
 - iii. At all times, tenants must know where the security deposit is being held because it is their money.
 - e. The broker is responsible for deposits; if the broker is no longer managing the property, the broker must notify the tenant that the funds have been transferred.

D. Landlord Tenant Act

1. Tenant Application
 - a. Application Fees
 - b. Background and Credit Check
 - c. Avoiding Discrimination
2. Tenancy Agreement (also known as a lease agreement or rental agreement)
3. Security Deposit
4. Rent
 - a. Late Rent
 - b. Raising Rent

5. Property Maintenance
 - a. Landlord Duties and Responsibilities
 - b. Tenant Duties and Responsibilities
 - c. If Landlord Fails to Maintain Property
6. Property Access
7. Subletting
 - a. Assignment of Lease
8. Termination of Tenancy
 - a. Number of Days for Notice to Quit
 - b. Eviction
 - c. Abandonment

UNIT 4 REVIEW QUESTIONS

1. It is a violation of fair housing law to refuse to rent to an alcoholic with a history of violence.
A. True
B. False
2. A landlord must *ALWAYS* return a security deposit within one month.
A. True
B. False
3. It is a violation of fair housing laws to make an accommodation in the rules of the building for a disabled tenant.
A. True
B. False
4. To get information on a domestic well, a broker would contact the state engineer.
A. True
B. False
5. A buyer does *NOT* need to be concerned about whether the seller pays for the work done before closing, because the seller would owe the money.
A. True
B. False
6. Dividing one lot or ownership interest into more than one lot or interest is subject to local and state subdivision regulations.
A. True
B. False
7. The maximum right-to-cure period for nonagricultural property is 230 days.
A. True
B. False
8. A property owner has three years to pay delinquent property taxes.
A. True
B. False
9. The public trustee and the lender will advertise the foreclosure sale.
A. True
B. False
10. A lease for 53 weeks must be in writing.
A. True
B. False

UNIT 4 REVIEW QUESTION ANSWERS

1. **B** The statement is false. A property manager can discriminate against someone who would pose a danger to others.
2. **B** The statement is false. The law allows up to 60 days if the lease provides for the extension of time.
3. **B** The statement is false. Reasonable accommodation in the rules for disabled tenants is required under fair housing laws.
4. **A** The statement is true.
5. **B** The statement is false. A mechanic's lien could be placed on the property after closing.
6. **A** The statement is true.
7. **B** The statement is false. The maximum is 125 days.
8. **A** The statement is true.
9. **B** The statement is false. Only the public trustee advertises.
10. **A** The statement is true. The statute of frauds requires that a lease for more than one year be in writing.

UNIT 5

Colorado Forms and Contracts

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

› Explain forms and contracts commonly used in Colorado Real Estate practice.

I. STANDARD AND APPROVED FORMS

A. *Conway-Bogue* decision

1. Brokers are practicing limited law when they fill out forms.

B. Commission Rules - Chapter 7

1. **Purpose: to assist brokers in complying with the *Conway-Bogue* decision.**
 - a. If a form is **approved**, brokers must use it.
 - b. Only licensed brokers are bound by Commission rules.
 - i. **If there is an approved form, the brokerage firm's attorney may not draft a similar form for general use in the real estate firm.**
 - c. Attorneys may always draft transaction-specific contracts for the parties they represent.
 - i. A brokerage firm's attorney may **not** prepare a contract to buy for a seller or buyer.
2. Language of approved forms must be used **exactly as approved by the Commission.**

3. Clauses that the parties agree to delete from their agreement may be deleted by striking out (lining out) **so the approved language is still legible**.
4. Certain clauses **specified by rule** may be omitted in the printing of the form—primarily financing methods that do not apply.
 - a. The clause caption (heading, i.e., *assumption*) must still be printed followed by the word **omitted**.
5. Only transaction-specific provisions negotiated between the parties may be in the additional provisions section.
6. Brokers' personal provisions or *exculpatory language* may only be in a contract to which the broker is a principal party (not the Contract to Buy and Sell).
7. Brokers may not fill out the form before discussing it with the parties.
 - a. Must be something that is negotiated
8. **Contract forms generated by computer** must
 - a. reproduce language exactly as approved,
 - b. have software security to prevent language from being inadvertently changed or deleted, and
 - c. differentiate (format differently) any language added in the blanks from the approved language.
 - i. It can be in *italics*, **bold**, a **larger size**, or a different **font**, as long as the reader can tell it is different from the approved language.
 - ii. It does not have to be in any specific font style or type, only different.
 - iii. Even your handwriting is deemed different if you are writing the offer by hand.
9. Addenda
 - a. Plural of addendum
 - b. May be created by an attorney
 - i. Of the principal or brokerage firm
 - ii. Never by the broker associate

C. Commission Rules do not apply to the following:

1. **Contracts for new homes with warranties**
2. Contracts prepared by subdivision developers or new home builders (they are not under the purview of the Real Estate Commission).

D. Mediation

1. **Mediation is standard (not negotiable) in all Colorado contracts.**

2. The parties (brokerage firm and consumer or seller and buyer) agree to submit any dispute about the contract to mediation within **30 days**.
3. Mediation is **not binding** (no resolution will be imposed if not agreed to by both parties). A resolution signed by the parties will be binding.
4. The parties jointly agree to a mediator.
5. The parties will **split the cost** of mediation. This is **not negotiable**.
6. After fair mediation (if the dispute is not resolved), either party may go through arbitration or go to court for litigation.
7. Mediation is not binding; the resolution (that all parties would agree to) is the only thing that is binding.

II. BROKERAGE REPRESENTATION

A. Representation

1. **Brokers must know whom they are representing and how this role may change.**
2. Agents owe OLD CAR.
 - a. Created by written agency listing contract
 - b. Additional fiduciary duties (obedience, advocacy, loyalty)
 - c. **Owe all loyalty to their principal whose interests are before all others**
 - d. **May only represent one side—single agent to seller or buyer**
3. Transaction-brokers owe DCAR (not an advocate for either party).
 - a. Created by a written exclusive right-to-buy or right-to-sell contract and checking the box at the top for transaction-brokerage
 - b. Or created by default using a written disclosure (brokerage disclosure to buyer or seller [sale by owner])
 - c. Act as a facilitator or referee
 - i. Must still keep price, terms, and motivation confidential
 - d. **May represent both sides (seller and buyer)**

B. Obligations of the brokerage firm

1. Designate broker associates to represent the firm's clients through the signed, written office manual
2. Supervise all the firm's broker associates either with a high or reasonable level of supervision depending on how many years they have been active real estate professionals (less than two versus two years or more)

C. Obligations of the broker associate

1. Meet the terms of all representation agreements and the uniform duties

2. **Maintain confidentiality of all parties being represented at all times**
3. Be knowledgeable of contract forms and law, as well as real estate law
4. Provide reasonable skill and care
5. Work with other firms to make sure contracts close

III. **SELLER AND BUYER LISTING CONTRACTS (EXCLUSIVE RIGHT-TO-SELL CONTRACT AND EXCLUSIVE RIGHT-TO-BUY CONTRACT)**

A. Key provisions of both listing contracts

1. **All contracts belong to the brokerage firm.**
 - a. The parties are the consumer (seller, buyer, landlord, or tenant) and the brokerage firm.
 - i. A brokerage firm's or consumer's attorney **may draft a transaction-specific** listing agreement.
 - ii. The brokerage firm's attorney may **draft an addendum** to be used by all brokers in the firm for all listings.
 - b. They are **express contracts (written or oral)**; implied contracts (only through action) are not acceptable.
 - c. **A broker may refuse to take a listing or work with a buyer.**
2. **The forms are used to establish representation: either agency or transaction-brokerage.**
 - a. Used to meet the requirement of express written agency agreement
3. **Compensation charged by real estate brokerage firms is not set by law; compensation is always negotiable.**
 - a. The brokerage firm (not the designated broker associate) earns the commission.
 - i. Seller's listing: fee/commission is always negotiable
 - ii. Buyer's listing: also called a success fee, typically the buyer's broker will seek payment from the listing broker, seller, and then the buyer
 - b. Holdover period (**may also be called the safety, protection, or extension clause**)
 - i. Do not confuse with the alienation clause (due upon sale of the property) or the acceleration clause (when a borrower defaults on a loan).
 - ii. It protects the brokerage firm.
 - iii. The broker must have negotiated holdover terms and submitted buyer names in writing during the listing term. This is in the listing agreement with the seller.
 - iv. Protection stops if the seller lists exclusively with another broker during the holdover period.
 - v. **The length of the holdover period is negotiable.**

4. The exclusive right-to-sell or right-to buy listing contract **designates the broker** to work for the **principal**.
 - a. The brokerage firm designates a broker associate to represent and have the brokerage relationship (agency or transaction-brokerage) with the seller or the buyer.
 - b. **Only the designated broker, not the employing broker, has the brokerage relationship with the consumer.**
 - c. A one-person firm cannot be a **designated broker**, only multiple-person firms.
5. **All listings must have definite start and end dates.**
6. **Listing brokers should have actual knowledge with regard to inspecting the property for defects, but they do not need to have an independent inspection done.**
 - a. **Brokers in Colorado are not responsible for verifying the accuracy or completeness of statements made by sellers or buyers,**
 - i. **unless** they believe the seller is stating something that is untrue.
 - b. Listing brokers must disclose known material defects to prospective buyers.
 - i. The broker should ask the seller questions to determine if there are material defects that require disclosure.
7. Uniform duties
 - a. For either a single agent (for one side of the transaction) or a special agent (listing or buyer's agent), the broker is required to provide DCAR.
 - b. Brokers representing members of the public as agents have three additional duties.
 - i. Obedience
 - ii. Loyalty
 - iii. Counsel/recommendations (or advocacy)

B. Single-party listing (CP-13)

1. **A listing only for one specific buyer**
2. Used in for-sale-by-owner transactions to ensure the broker will be paid
 - a. The additional provisions section states who the parties are, how each will be represented, and the compensation for the transaction.
 - b. **Remove the holdover clause.**

C. Other forms used with the listing contract

- **Note: Disclosure forms are signed by the parties to the transaction to prove that they have been given and received.**

1. Seller's Property Disclosure

- a. The seller fills out and signs the form (**the broker does not**) based on the **seller's current actual knowledge**.
- b. The seller **must** disclose material facts that are known, and this is **not optional**. Even if selling the property in as-is condition, all known facts must be disclosed.
- c. **If the seller declines to complete the disclosure form, the broker should inform the seller that the buyer will most likely request the disclosure as part of the Contract to Buy and Sell.**

2. Lead-Based Paint Disclosure

- a. The seller discloses the potential for lead-based paint on properties with **building permits issued before January 1, 1978 (1-1-78)**
 - i. **The date is not from when improvements were completed.**
 - b. Discloses the seller's knowledge, if any, of lead-based paint contamination
 - i. This is the **seller's obligation**, not the broker's.
 - c. Signed by the licensee and seller and given to the buyer
 - i. The seller signs to certify that the disclosure is accurate to the best of the seller's knowledge.
 - ii. The listing broker signs to acknowledge receipt of the disclosure, confirm that seller has been informed of seller's obligations, and ensure compliance.
 - iii. The buyer's broker also signs to acknowledge receipt of the disclosure, confirm that seller has been informed of seller's obligations, and ensure compliance.
 - iv. The buyer signs to affirm receipt and indicate choice of a 10-day inspection period.
3. **Square Footage Disclosure:** Required to be supplied by **the listing broker** if square footage of a **residential** property is given
- a. **If the listing broker measures the property, indicate which method was used, or**
 - b. **If another source for square footage is used, name the source.**
 - i. **The listing broker must use a reliable source, indicated by a box that is checked and filled in on the form.**
 - c. Square footage is for **marketing, not for valuation or financing**.
 - d. The buyer's broker may rely on what is given in the MLS; however, the rule states: "Broker representing Buyer is responsible for indications of obvious mismeasurement by others."
 - i. **The brokers, not the buyer or the seller, are responsible for any obvious mismeasurement.**

4. Listing Contract Amend/Extend Contract **With Broker**

- a. **Between the seller and the broker, or the buyer and the broker).**

- b. This form is used to modify (change) an existing listing contract with either the seller or the buyer.
 - i. It is a dual form. It either extends the duration of a relationship or is used to lower a listing price.
 - c. The broker must amend or extend a listing or buyer representation agreement **before the termination date**.
5. Change of Status
- a. Used when changing status from an agent to representing both parties as a transaction-broker.
 - i. Not used if the broker is already a transaction-broker (no need to change status)
 - ii. Used to notify the seller and/or the buyer of the implementation of the change of status--the brokerage relationship is NOW changing
 - b. **Not a new agreement**
 - i. Permission was provided and agreed upon in the original listing agreement (because of the *box that was checked* in the original listing agreement).

IV. CONTRACT TO BUY AND SELL REAL ESTATE (CBS)

A. Stages of real estate purchase contract

Stage	1. Listed	2. Offer, acceptance, and communication of acceptance	3. Under contract (with or without earnest money)	4. Closing
Features	On the market	Offeror —made last offer Offeree —received last offer Attachments—explain Addendum/Addenda are attached to offers	Buyer (vendee) has equitable title (owner in equity) Seller (vendor) retains legal title Amendments modify contracts	Transfer of legal title to buyer Grantee = buyer Deed: Grantor = seller
Key points		Acceptance must be communicated to the offeror to form a binding contract	Executory period	Executed

B. Contract to Buy and Sell: six versions

1. **Need to know there are six:**
- a. Residential
 - i. Used for all non-income residential sales
 - b. Income-residential
 - i. Used for all residential income sales (no matter the size)

- c. Residential Foreclosure Act
 - i. Used if the Colorado Foreclosure Protection Act applies
- d. Commercial
 - i. Used for all commercial property sales
 - ii. Cannot be used for any type of residential property
- e. Land
 - i. Used for vacant land
 - ii. If residential property is to be conveyed with the land, the contract requires a residential addendum.
- f. Manufactured home
 - i. Used for manufactured homes sold on leased lots

C. Parties

1. The parties are the buyer and the seller.
2. The brokerage firm is not a party to this contract.
3. The brokerage firm's attorney **may not draft** a general or specific contract form for a buyer or a seller.
 - a. An attorney for the principal may do this, but not the attorney for the brokerage firm.

D. Key provisions

1. Date and deadline
 - a. Appear only in the date and deadline table
 - b. Defined in the appropriate referenced sections.
2. Inclusions and exclusions
 - a. Fixtures must be **excluded**, while personal property must be **included** in the Contract to Buy and Sell.
 - i. **Inclusions would be listed in a different font in the contract.**
 - b. Personal property
 - i. Listed items are included **as of the date of the contract and will transfer** unless specifically excluded in the Contract to Buy and Sell.
 - Not in the MLS or the Seller's Property Disclosure.
 - ii. For **leased appliances**, check the box and put lease details in *the additional provisions section*.
 - The buyer should be aware that **liabilities may be created by taking over the lease**.

3. Financing conditions and obligations

- a. New loan terms and new loan availability deadlines
 - i. The contract is contingent on the buyer obtaining a loan with conditions that are acceptable to the buyer in the buyer's subjective opinion.
 - ii. If the buyer is unable to obtain a loan that is acceptable, the buyer may **terminate** by written notice to the seller no later than the new loan availability deadline.
- b. Credit information is given to the seller for seller financing.
 - i. **The seller may not share credit information with others.**

4. Appraisal provision

- a. The cost of the appraisal and who will pay for it is negotiated in the Contract.
- b. FHA appraisals can be negotiated if the appraised amount is not the agreed-upon amount; the buyer can bring money to the closing, or the buyer and the seller can negotiate another sale price.

5. Evidence of title

- a. Per the Contract to Buy and Sell, the cost of title is negotiated
 - i. An owner's policy of title insurance will be delivered to the buyer after closing occurs.
 - ii. Paid for one time at closing
- b. **Common interest community (CIC)** documents are used for communities with the authority to levy **mandatory assessments** for the maintenance of common elements (owners associations).
 - i. Creates statutory liens for OA dues and assessments
- c. Contract process for the CIC documents:
 - i. The sellers must provide the documents. Once the buyer receives them, the sellers have met their obligations, no matter how the buyer obtained the documents.
 - ii. If the buyer finds the conditions unacceptable, the buyer may terminate the contract by written notice **before the association documents termination deadline.**
 - The seller does not have an obligation to change the CIC rules
 - iii. **The seller has no obligation to change CIC items that the buyer is not satisfied with; however, the buyer does have the right to terminate the contract per this contingency before the deadline.**

6. Title advisory

- a. This warns that **third parties** may own rights in minerals or other interests, giving them the right to enter and use the property.

7. Lead-based paint disclosure

- a. This is required if the property has a **building permit** issued before January 1, 1978.
- b. **It must be given to the buyer by the Lead-Based Paint Disclosure deadline or the buyer can waive the failure to receive or terminate the contract.**

8. Property disclosure and inspection

- a. The seller agrees by contract to provide a completed *Seller's Property Disclosure*
 - i. *However, if the seller checked the box in the listing agreement that it is not being provided, the listing broker will have to counter the Contract to Buy and Sell, stating it will not be provided.*
- b. Inspection objection and resolution deadlines
 - i. The buyer has until the objection deadline to inspect and send any requests to the seller via the approved form (Inspection Objection).
 - ii. The parties must resolve inspection issues before the resolution deadline or
 - the contract will **terminate** on or before the **resolution deadline**.

9. Methamphetamine laboratory disclosure

- a. If the property has not been cleaned, the seller is required to disclose.
- b. If the property has been cleaned and received state certification, the seller is **not** required to disclose.
- c. The buyer has the right to have the property tested. If the property was used as a methamphetamine laboratory and is not cleaned or certified to state standards, the buyer may terminate the contract on or before closing.

10. Walk-through

- a. This provides for a walk-through inspection before closing to **“verify the physical condition of the property and inclusions.”**
 - i. The walk-through is not another inspection.

11. Default remedies

- a. If the buyer is in default, there are two possible remedy provisions for the seller.
 - i. The contract default is liquidated damages. A box must be checked for specific performance.
 - ii. **Specific performance**
 - **Note: all commission-approved contracts allow for this.**
 - The seller may keep the earnest money, sue for damages, or sue to force the buyer to buy.
 - iii. **Liquidated damages**
 - The default seller's remedy is limited to keeping the earnest money.

- b. If the seller is in default, the buyer has specific performance remedies.
 - c. For any **termination**, the broker must return the earnest money **immediately**, unless there is an **earnest money dispute**.
12. Earnest money dispute
- a. The buyer and the seller will still mediate.
 - b. The broker may do one of the following:
 - i. Hold the earnest money until the parties give mutual written instructions (Earnest Money Release form)
 - ii. Send the money to the appropriate court (**interplead the parties**) to settle the matter
 - iii. Notify the buyer and the seller to send any information about a lawsuit within 120 days or the broker will return the money to the buyer.
13. Notice, delivery, and choice of law
- a. It allows for e-signatures; however, it states that **“original signatures shall be provided upon request of any party.”**
14. Broker acknowledgments
- a. The brokers involved sign to acknowledge
 - i. if they have **received the earnest money**; and
 - ii. their brokerage relationship in the transaction.

V. FORMS USED WITH THE CONTRACT TO BUY AND SELL

A. Counterproposal

- 1. A counterproposal **terminates the offer** and creates a new one (the parties are still negotiating).
- 2. The counterproposal must be attached to the original offer.
- 3. **The offeree, who is the seller, does not sign the offer, only the counteroffer.**
- 4. **The seller is not able to accept another offer from another party if the counteroffer/proposal has been signed by the seller.**

B. Inspection Objection

- 1. This form carries out the steps in the inspection section.
- 2. **It does not change the objection or resolution deadline; the broker would use an amend/extend contract form.**
- 3. The buyer must use this form to notify the seller of requests to fix or provide money for items found during the inspections.

4. This form is only signed by the buyer.
5. If the parties do not reach a resolution by the resolution deadline, the buyer may revive the transaction by withdrawing the objections. Otherwise, the contract terminates on the resolution deadline.

C. Agreement to Amend/Extend Contract

1. **Used to modify the Contract to Buy and Sell only**
2. Used to extend or change provisions, such as the closing date
3. Must be signed by all parties **before the deadline**

D. Licensee Buyout Addendum

1. **Commission Position Statement CP-23**
2. Is used **only** by
 - a. the designated listing broker; and
 - b. the employing broker of the listing company
3. Is binding on the listing company only if the employing broker signs at the bottom of the form
4. **The agreement states the following:**
 - a. The **broker/buyer** is a licensee and can fund the purchase.
 - b. The **broker/buyer** may make a profit on the resale.
 - c. The **broker/buyer** will be obligated to pay losses or expenses.
5. **Does not require the seller to pay any costs or commission fees to the buyer/broker if the buyout closes**

VI. ADDENDA (AN ADDENDUM), ATTACHMENTS, ADDITIONAL PROVISIONS, AND AMENDMENTS

A. Addendum

1. Brokers and brokerage firms **may not write/create or draft** any addenda.
2. The following may draft/write or create an addendum:
 - a. A principal to the transaction
 - b. An attorney representing the principal
 - c. The attorney for the brokerage firm

B. Attachments

1. Hooked to a lawful objective, such as a Lead-Based Paint Disclosure.

2. These are disclosures that describe or explain more about what is already a part of the contract.
3. They are usually disclosures that were already approved by the Real Estate Commission or an attorney has created for everyone in the brokerage firm to use.
4. An addendum is an attachment.

C. Additional provisions

1. Written as a negotiation in a Contract to Buy and Sell or a listing or buyer representation agreement
2. May not contain any language that indemnifies, holds harmless, eliminates, or lessens the liability or responsibility of the real estate broker/professional
 - a. Examples:
 - i. A contingency clause that allows the buyer to sell a current home before buying the home in this offer
 - ii. Clarification of anything in inclusions or exclusions (making sure the backyard is cleaned up from something specific—e.g., clearing out pet droppings or removing firewood)
 - b. Keeping a play set (or removing it) would be in the additional provisions.

D. Amendments

1. In Colorado there is an approved form called an Agreement to Amend/Extend Contract.
 - a. This form is used to change any date in the mutually agreed-upon Contract to Buy and Sell.
 - b. It **MUST** be signed by all parties before the deadline.
 - c. If changing the Inspection Objection, and especially the Inspection Resolution, this is the form.
 - i. If changing the Inspection Resolution deadline, and all parties don't sign on or before the deadline, the contract is terminated.

UNIT 5 REVIEW QUESTIONS

1. If a residential building permit was issued on a listed property before January 1, 1978, the seller is required by federal law to remove all lead-based paint.
A. True
B. False
2. A brokerage firm's attorney could draft a transaction-specific contract for the firm's client that the attorney does not represent.
A. True
B. False
3. When a contract is terminated under its provisions, the earnest money should be returned to the buyer immediately.
A. True
B. False
4. A broker must *ALWAYS* have a proper written mutual agreement from the seller and the buyer before returning earnest money under a contract termination.
A. True
B. False
5. A lead-based paint disclosure must be given to a buyer of any property with improvements completed after January 1, 1978.
A. True
B. False
6. A Commission rule allows for listings to last "until sold."
A. True
B. False
7. A nonresident Colorado broker is *NOT* required to maintain a place of business within Colorado.
A. True
B. False
8. A nonresident broker with a transaction in Colorado may hold trust funds in a properly insured bank in the broker's resident state.
A. True
B. False
9. An earnest money check is held by the buyer's broker until closing.
A. True
B. False
10. A broker may add a non-negotiated addendum to the Contract to Buy and Sell.
A. True
B. False

UNIT 5 REVIEW QUESTION ANSWERS

1. **B** The statement is false. The seller must provide the warning about lead-based paint and disclose any known lead-based paint hazard.
2. **B** The statement is false. Attorneys may only draft contracts for parties they represent.
3. **A** The statement is true. The only exception to this rule is if the earnest money is in dispute.
4. **B** The statement is false. The terms of the contract specify return of the earnest money without delay unless the funds are in dispute.
5. **B** The statement is false. The disclosure must be given to the buyer if a building permit was issued before January 1, 1978.
6. **B** The statement is false. A Commission rule specifically calls for a “definite termination date” in all listings (and buyer representation agreements).
7. **A** The statement is true. The nonresident broker must have a place of business in the broker’s resident state.
8. **B** The statement is false. Trust funds for a Colorado transaction must be held in a Colorado depository, which could be a title company.
9. **B** The statement is false. Commission Rule 5.12. specifically requires that earnest money be delivered to the listing broker.
10. **B** The statement is false. The broker would be in violation of Chapter 7.



UNIT 6

Recordkeeping and Trust Accounts

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

› Describe the requirements for recordkeeping and trust accounts in Colorado real estate practice.

I. TRUST ACCOUNTS

A. What is a trust account?

1. A separate account to benefit others
 - a. The broker must use a high level of accuracy and care.
 - b. **It may not be used to hold referral, repair, or operational fees.**

B. Who must have trust accounts?

1. Any employing or independent broker, when they hold money for others
2. Must establish an account by the time they first receive money belonging to others
3. Employed or broker associates are not allowed to have trust accounts
4. Can be held by a title company

C. Number of trust accounts

1. **How many trust accounts does a broker need?**
 - a. Enough to ensure that funds will not be commingled

2. The Commission requires the following:
 - a. **Sales trust account:** for money held in connection with sales transactions pending closing
 - b. **Management trust account:** for money held in connection with property management services
 - c. **Security deposit trust account:** for refundable security deposits collected from tenants or short-term occupants, for lease and rental units under management by the broker
 - d. **Advance rental:** for rental money collected in advance, especially for short-term rentals as experienced in resort and vacation rentals
 - e. **Owners association trust account:** for funds held on behalf of condominium or planned community associations
 - i. Use a separate account for each association and identify the account with the tax identification number of each association
3. The number of accounts depends on the activities of the firm.
 - a. If managing properties, the firm must have at least one trust account
 - i. If holding security deposits, must have one.
 - ii. If holding rents and security deposits, must have two.
 - iii. If the firm is also engaged in sales activities, the firm must have a trust account for earnest money.

D. Interest-bearing accounts

1. All parties must agree if the account is to be interest-bearing; however, the broker can have an interest-bearing account if the interest will be for the benefit of an approved nonprofit housing opportunity fund.

E. Setting up a trust account

1. It must be insured by a government agency.
2. Banks, which are insured by FDIC, and federal credit unions, which are insured by NCUA, are acceptable.
3. **The bank must recognize that the account is a trust account; the word *trust* or *escrow* must be in the account name.**
4. The account must be in the name of **the corporation and the designated principal broker.**
 - a. Example: ABC Realty John Jones Employing Broker Trust Account
5. Branch offices do not need to have trust accounts separate from the main office unless they **maintain separate bookkeeping systems.**

F. Operating a trust account

1. The employing or managing broker is responsible for supervising trust accounts and
 - a. must be able to withdraw funds without a co-signer (other authorized parties, whether licensed or unlicensed, may sign on the account);
 - b. may use **enough broker's funds** to maintain the account (there is no set dollar amount);
 - c. must not commingle operating account funds with trust funds; and
 - d. must only move commissions from the trust account to the operating account before disbursement and **only after** they are earned.
 - i. Commissions, once earned, should be removed **promptly** (there is no set date) from the trust account and moved to the operating account.

II. EARNEST MONEY**A. Deposits**

1. **Given to the listing broker and deposited in the listing brokerage or title company account within three business days after acceptance**
 - a. The broker is responsible to hold it in a secure place until the offer is accepted or rejected.
2. Check should be identified in the Contract to Buy and Sell
3. Can be deposited with a third party or closing company, with permission of the parties

B. Earnest money promissory note

1. Made out to the listing broker and clearly noted in the Contract to Buy and Sell
2. Due date set before closing, so all funds will be good funds at closing
3. Listing broker responsible for collecting the note
 - a. If the listing broker cannot collect the money, the broker must inform the seller immediately.
 - b. If the buyer does not pay as agreed, the buyer is in breach and the contract is voidable by the seller.
 - i. The buyer agrees to pay all reasonable collection fees. There is no set limit on the amount if the note goes to court to be collected.

III. RECORDKEEPING**A. Transactions**

1. Brokers are responsible to make sure that they have a complete file of all agreements made during the transaction.
2. Only the listing broker needs to have the Exclusive Right-to-Sell Contract on file.

3. Only the broker representing the buyer needs to have the Exclusive Right-to-Buy Listing Contract in a file.
4. Both brokers should have **copies of the rest of the documents**.
 - a. **Must have copies of closing statements**
 - b. **May have copies of deeds and deeds of trust, or title work**

B. Records and systems

1. **Records must be kept for four years.**
2. In addition to the transaction files, the employing or independent broker has to have account records that include the following:
 - a. Account **journal**: cash receipts/disbursement
 - i. **Chronological record of all deposits, withdrawals, and activity in the account**
 - ii. **Indicates who the money is from and dates deposited—not specific information on the individual**
 - b. **Ledger** account system
 - i. Separates funds in the account by **single** beneficiary or transaction; might have information like the **Social Security or tax identification number**
 - ii. **Broker ledger card shows funds belonging to the broker (to maintain the account and pay any fees charged)**
 - c. Bank reconciliation records
 - i. **Trust accounts must be reconciled every month that there is activity in the account.**
 - d. Disbursements must be supported by documentation
3. **A sole proprietor who closes office and goes to work at a different brokerage firm is responsible for maintaining the records for the closed office for four years (the new employing broker is not responsible for this).**

C. Safeguards

1. Frequent reconciliation
 - a. Active accounts must be reconciled monthly.
2. Separation of duties
3. Outside audits
4. Real Estate Commission assistance

D. Commingling of trust funds

1. Trust account funds should not be mixed with operating account funds.
2. Property managers must be careful not to use one owner's funds to pay for another owner's bills; this is called **conversion**.
3. The employing broker is personally responsible for accurate accounting.
4. Employing brokers must not put business trust funds (e.g., payroll tax withholding into their real estate trust account.

UNIT 6 REVIEW QUESTIONS

1. The function of the broker ledger card is to keep track of brokerage funds in the trust account.
A. True
B. False
2. Trust accounts must be reconciled quarterly if there is account activity.
A. True
B. False
3. An active property management escrow account must be reconciled at *LEAST* monthly.
A. True
B. False
4. A property manager using one owner's funds to pay another owner's bill is in violation of trust account law.
A. True
B. False
5. A property manager placing funds belonging to several owners in the same trust account is commingling.
A. True
B. False
6. Conversion is using one person's funds to pay for another person's property.
A. True
B. False
7. Paying a bill for a landlord client directly from a trust account is commingling.
A. True
B. False
8. Brokerage transaction records must be maintained a minimum of five years.
A. True
B. False
9. All licensed brokers must establish a trust account before accepting money from the public.
A. True
B. False
10. A broker holding funds collected to pay employee taxes and benefits should place the money in the contract's escrow account.
A. True
B. False

UNIT 6 REVIEW QUESTION ANSWERS

1. **A** The statement is true.
2. **B** The statement is false. Monthly reconciliation is required for active accounts.
3. **A** The statement is true.
4. **A** The statement is true. This is called conversion.
5. **B** The statement is false. As long as proper ledgers separate the ownership amounts, this is acceptable.
6. **A** The statement is true.
7. **B** The statement is false. This is normal as long as that client has enough money in the trust account.
8. **B** The statement is false. The minimum is four years.
9. **B** The statement is false. Only independent and employing brokers are allowed to have trust accounts.
10. **B** The statement is false. This account is for funds held on behalf of sellers and buyers, not employees.



UNIT 7

Closing and Settlement

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

- › Explain the key forms and steps involved in closing and settlement, including proration.

I. FORMS INVOLVED WITH CLOSING

A. Closing instructions

1. The three-party agreement is between the buyer, the seller, and the closing company.
2. The seller and the buyer select a closing company and give it authority to prepare settlement statements and documents such as deeds and bills of sale.
3. The closing company's job is to close the transaction according to the terms of the contract.

B. Contract to Buy and Sell

1. Sets terms of transfer
2. Determines who pays for what
 - a. For example, closing fees charged by a closing company are negotiable.

C. Deeds and bills of sale

1. Deeds convey title to real property.
 - a. A Colorado documentary fee of **\$0.01 per \$100** of the purchase price is paid upon the recording of any conveyance deed.
2. Bills of sale convey title to personal property.

D. Certificate of Taxes Due

1. **Reports the ad valorem taxes or assessed taxes due**
2. The county verifies amount of taxes owed (this is an assurance of what is owed).

E. Real Property Transfer Declaration (TD-1000)

1. Filled out at closing; **required by the state and sent to the county assessor**
2. Declares market price (**not** market value) and circumstances of sale
3. **Used to help ensure fair and uniform property tax assessments**
4. **Does not transfer personal property**

F. Closing settlement statement form

1. The listing broker (brokerage is responsible for the overall supervision of the closing.
2. **The Closing Statement form is approved and must be provided to the buyer and the seller at the closing.**
3. The statement identifies if it is a buyer or a seller statement.
 - a. The buyer's settlement statement contains only the buyer's debits and credits.
 - b. The seller's settlement statement contains only the seller's debits and credits.
4. Designated brokers **are responsible for the accuracy of the statement for the party (or parties) they represent.**
5. **If a broker asks another broker to attend the closing for them, brokers and their employing broker will be responsible for the accuracy of all closing documents for the party they represent.**

II. RESPONSIBILITIES OF CLOSING**A. Good funds**

1. Colorado law requires amounts brought to closing to be in good funds.
 - a. Good funds may include the following:
 - i. **Cashier's checks** from a commercial bank

- ii. **Teller's checks** from a savings and loan
 - iii. Funds conveyed using the federal funds **wire transfer** system
2. **Good funds do not include any business checks, personal checks, money market checks, certificates of deposit, or title insurance company checks.**
- B. 2% nonresident seller income tax withholding**
- 1. The **closing entity** is responsible to withhold up to 2% of the sales price for a nonresident seller.
 - a. **A closing entity can be a broker, an attorney, or the title/closing company.**
 - 2. The rule only applies on property sold for \$100,000 or more.
 - 3. Sale of a principal residence is exempt from this rule (only for investment or nonprimary resident properties).
 - 4. Withholding is the lesser of
 - a. the seller's net proceeds of sale, or
 - b. 2% of the sale price.
- C. The broker associate must return all closing documents to the employing broker immediately after the closing.**

Figure 7.1: How Paid Items Are Recorded on the Settlement Worksheet and Closing Statement

Selected Items	Details to Remember	Settlement Worksheet	Closing Statement
Sales price		Debit buyer, credit seller	Appears on both buyer's and seller's
Earnest money		Credit buyer, debit broker	Appears on buyer's only
Assumed loan amount	Principal remaining on loan assumed by buyer	Credit buyer, debit seller	Appears on both buyer's and seller's
Accrued interest on assumed loan	Prorated seller owes buyer for month of closing	Debit seller, credit buyer	Appears on both buyer's and seller's
Seller carry loan amount	Reduces seller's cash at closing	Credit buyer, debit seller	Appears on both buyer's and seller's
Broker's commission	Negotiable Usually seller pays	If seller pays, debit seller, credit broker	If seller pays, appears on seller's only
Owner's (buyer's) title insurance	Seller pays owner's policy	Debit seller, credit broker	Appears on seller's only
Mortgagee's (lender's) title insurance	Buyer pays lender's policy	Debit buyer, credit broker	Appears on buyer's only
Notary fee for warranty deed	Who signs document pays notary; seller signs deed	Debit seller, credit broker	Appears on seller's only

Figure 7.1: How Paid Items Are Recorded on the Settlement Worksheet and Closing Statement (cont.)

Selected Items	Details to Remember	Settlement Worksheet	Closing Statement
Recording of warranty deed	Recording deed benefits buyer/grantee	Debit buyer, credit broker	Appears on buyer's only
Documentary fee	\$0.01 per \$100 of sales price	Buyer pays: debit buyer, credit broker	Appears on buyer's only
Notary fee for deed of trust	Buyer signs promissory note and deed of trust at closing	Debit buyer, credit broker	Appears on buyer's only
Tenant security deposits	Not prorated; belong to tenants	Debit seller, credit buyer	Appears on both buyer's and seller's
Rents	Prorated; paid in advance	Debit seller, credit buyer	Appears on both buyer's and seller's
New loan amount	Figures from the new lender	Credit buyer, single entry	Appears on buyer's only
Discount points and loan origination	Buyer typically pays	Debit buyer, single entry	Appears on buyer's only
Net loan proceeds	New loan closing	Debit broker only	Does not appear on either
Taxes for the preceding year if unpaid	Credit depends on circumstances	Always debit seller, may credit buyer or broker or new lender	Debit seller
Special taxes (special assessments)	May be paid off or assumed	If assumed, no entry; if paid, debit seller	Appears on seller's only

Figure 7.2: Proration Help Chart

SELLER	BUYER
Arrears	Advance
Seller owes buyer SOB	Buyer owes seller BOS
Debit seller/credit Buyer (DS/CB)	Debit buyer/credit seller (DB/CS)
Interest on assumed loan	Interest on a seller carry loan
	Often water or HOA dues
Current-year taxes	
Any bill paid in arrears—paid after the closing by the buyer	Any bill paid in advance—paid before the closing by the seller
Solve left side	Solve right side
Seller always owes buyer rent	

Remember: Items paid quarterly will need to be prorated based on which quarter is being charged.

1st quarter: January, February, March

2nd quarter: April, May, June

3rd quarter: July, August, September

4th quarter: October, November, December

D. Assumption types

1. Strict
 - a. The lender decides if the new borrower is able to take over the loan already in place.
 - b. Creditworthy borrower has to prove only good credit to take over the loan.
2. Qualified assumption (the middle of the road assumption)
3. All assumption clauses are found in the alienation clause in the deed of trust and never have an increase in interest rate.

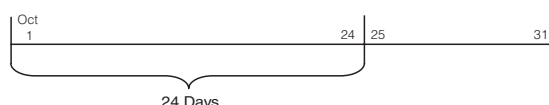
SAMPLE PRORATION PROBLEMS

1. A buyer is assuming a loan at a closing on October 25. The loan balance after the October 1 payment is \$125,000, and the interest rate is 10%. How will the interest proration appear on the buyer's closing statement?
A. \$235.22 credit
B. \$236.82 debit
C. \$806.45 credit
D. \$1,041.67 debit

(NOTE: Mortgage paid monthly in arrears is the only time to divide by 12.)
2. A seller is providing a seller carry loan of \$15,000 at an interest rate of 10%. If the closing is on August 25 and the first payment on this new loan is due October 1, what is the interest adjustment on the six-column settlement worksheet?
A. \$24.66 debit buyer, credit seller
B. \$28.77 debit buyer, credit seller
C. \$152.07 debit buyer, credit seller
D. \$154.60 debit seller, credit buyer
3. What entry will appear on the seller's Closing Statement for the current year's taxes if the tax amount for the preceding year was \$963.60 and the closing date is August 13?
A. \$372.24 credit
B. \$591.36 debit
C. \$594.00 debit
D. \$963.60 debit
4. Monthly rent of \$875 was paid on the first of the month for a property being sold with the closing on March 24. How will the rent appear on the seller's Closing Statement?
A. \$197.58 debit
B. \$225.81 debit
C. \$649.19 debit
D. \$678.00 credit

SAMPLE PRORATION SOLUTIONS

1. **C** A buyer is assuming a loan at a closing on October 25. The interest loan balance after the October 1 payment is \$125,000 and the interest rate is 10%. How will the interest proration appear on the buyer's closing statement?



$$\$125,000 \times 10\% \div 12 \text{ months} = \$1,041.67 \text{ per month}$$

$$\$1,041.67 \div 31 \text{ days} \times 24 \text{ days} = \$806.45$$

NOTE: For calculation of interest on an assumed loan when given the loan balance and interest rate, find the annual interest and **divide by 12 to get one month's interest**. Then prorate in the closing month for the final answer. **Credit the buyer** with the seller's share because payment is made in arrears on November 1.

NOTE: This problem can be solved without calculation beyond the one-month interest figure of \$1,041.67. The 24 days the seller owes is clearly more than half of the interest, or more than \$500. Only the \$806.45 number fits. The amount must be a credit on the Buyer's Closing Statement, so only answer A is possible. With this estimation method, you would get the correct answer whether you divided by 12 (correct) or by 365 (not correct) to get the one-month interest figure.

2. **B** A seller is providing a seller carry loan of \$15,000 at an interest rate of 10%. If the closing is on August 25 and the first payment on this new loan is due October 1, what is the interest adjustment on the six-column settlement worksheet?



NOTE: September interest will be paid in arrears with the October 1 payment. Closing company must adjust for the unpaid interest from closing to September 1. New loan interest adjustment is calculated by finding a **daily interest amount** and multiplying by the unpaid days.

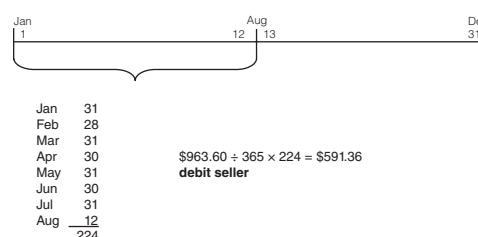
$$\$15,000 \times 10\% \div 365 \times 7 \text{ days} = \$28.77 \text{—debit buyer, credit seller/lender (in this case)}$$

3. **B** What entry will appear on the seller's Closing Statement for the current year's taxes if the tax amount for the preceding year was \$963.60, and the closing date is August 13?

Typically, tax prorations are based on the previous year's taxes unless the problem provides a different amount. Colorado property taxes are paid in arrears and for this problem were based on the previous year's taxes.

Closing date: August 13

Last year's taxes: \$963.60



4. **B** Monthly rent of \$875 was paid on the first of the month for a property being sold with the closing on March 24. How will the rent appear on the seller's Closing Statement?

Rent (paid on the first of the month in advance unless specified otherwise)

Closing date: March 24 Rent paid from March 1 to April 1

$$\text{Monthly rent: } \$875 \div 31 \times 8 = \$225.81$$



Debit seller (who holds the rent collected in advance)

Credit buyer (who owns the property for the final 8 days of the month)

UNIT 7 REVIEW QUESTIONS

1. The listing brokerage firm is solely responsible for the accuracy of figures on the Buyer's Closing Statement at closing.
A. True
B. False
2. A title insurance company closing a transaction is solely responsible for the figures on the Closing Statement for the closing.
A. True
B. False
3. The good funds law allows brokerage escrow account checks as long as there are sufficient funds to cover the check immediately.
A. True
B. False
4. A title insurance company check is good funds for a real estate closing.
A. True
B. False
5. Association reserve funds previously collected are prorated at closing.
A. True
B. False
6. The broker debit entry represents an amount received by the broker to hold for one of the parties.
A. True
B. False
7. An investor is selling a rental property. At closing, the tenants' full security deposits will be a debit to the seller and a credit to the buyer.
A. True
B. False
8. In a new loan closing, the net loan proceeds figure becomes a credit to the broker.
A. True
B. False
9. General property taxes in Colorado are paid in advance.
A. True
B. False
10. In the event a house in Colorado sells for more than \$100,000, the entity handling the closing is responsible for collecting and remitting 2% of the selling price from the nonresident transferor as state income tax withholding.
A. True
B. False

UNIT 7 REVIEW QUESTION ANSWERS

1. **B** The statement is false. Primary responsibility is with the designated broker for each individual party; therefore, the buyer's designated broker is responsible for the Buyer's Closing Statement.
2. **B** The statement is false. While the title company may be responsible under a closing instructions agreement, the designated broker for each party is responsible for the accuracy of the closing for their party.
3. **B** The statement is false. Good funds must be available immediately from any bank. Cashier's checks, teller's checks, and federal wire transfers are acceptable.
4. **B** The statement is false. Good funds must be available immediately from any bank. Cashier's checks, teller's checks, and federal wire transfers are acceptable. No personal or corporate check is acceptable.
5. **B** The statement is false. These funds represent wear and tear during the seller's ownership. They are not prorated.
6. **A** The statement is true.
7. **A** The statement is true.
8. **B** The statement is false. This figure is a debit to the broker (deposited into the trust account to pay bills).
9. **B** The statement is false. The taxes are paid in arrears.
10. **A** The statement is true. The actual amount will be 2% of the seller's net proceeds, whichever is less. For example, if the seller owed \$6,000 but net proceeds were \$4,500, only \$4,500 would be collected.



UNIT 8

Brokerage Relationships

LEARNING OBJECTIVE

When you have completed this unit, you will be able to accomplish the following.

› Distinguish the types of brokerage relationships in Colorado.

I. BROKERAGE RELATIONSHIPS: AGENCY OR TRANSACTION BROKER (REPRESENTATION)

A. Definitions of brokerage relationships

- **Note:** A description of the relationships the firm offers is the only item required by law to be in the written office manual.

1. Single agent

- a. **Colorado allows only single agency**

- b. Defined by license law as a **limited agent** with the following statutory duties:

- i. Carry out the terms of a **written agreement**
- ii. Promote the interests of the principal with **utmost good faith, loyalty, and fidelity**
- iii. Must **not** disclose the following without the informed consent of the principal (remember that **price, terms, and motivation** are always confidential)

- The **seller's agent** may not disclose stigmatized property issues without the seller's permission.

- **Colorado law** says such stigma is not a material fact.

- The **seller's or buyer's agent** is a single agent working solely with the seller (or landlord) or buyer (or tenant). The broker
 - must have a **written agreement** to establish an agency relationship,
 - owes statutory agency duties to the seller or buyer (OLD CAR),
 - is an **advocate** for the represented party, and
 - must disclose to the parties all **adverse material facts** known by the broker.

2. Transaction-broker

- a. May represent one or both parties in the real estate transaction and owes DCAR
- b. **Not** an agent or **advocate**
- c. Transaction-broker is the default relationship in Colorado when no relationship is in writing
 - i. **A written listing contract is not required, but the broker must provide a written disclosure.**
 - ii. The transaction-broker must keep information confidential for the benefit of both parties.

3. Customer: a party to a transaction who has not engaged or employed a broker

- a. **Is not represented.**
- b. **A written *Brokerage Disclosure to Buyer* or *Brokerage Disclosure to Seller*** is the form that makes a customer a customer.
 - i. It must be signed for the person to become a customer, yet by law, it only has to be given at the first physical contact.
- c. The brokerage has no legal brokerage relationship with a customer.
- d. A broker still has legal duties to the customer, including the following:
 - i. Disclosure of material defects
 - ii. Honest and fair dealing and care
 - iii. Accounting for property or things of value
 - iv. **May do anything for the customer that does not violate their agency relationship (agency relationship trumps customer relationship)**

4. *Dual agency* and *subagency* are not permitted under Colorado law.

B. Designated brokerage law

1. Designated by the employing broker to represent the client

- a. Designation must be in writing (can be by written policy or manual).

- b. **The brokerage relationship is only with the designated broker associate, not the employing broker.**
 - i. The designated broker may share confidential information about the principal with the employing broker as part of supervision.
- c. Designated brokerage may include teams or multiple brokers specifically designated to serve in a transaction.
- d. The employing broker may replace a designated broker or add new designated brokers in writing.
- e. The brokerage firm owns the contract; the designated broker **performs the services and has the brokerage relationship.**
- f. The employing broker and the brokerage firm still have the duty to supervise the designated broker and have vicarious liability for the acts of the employed designated broker.
- g. **One-person brokerage firms are excluded from designated brokerage.**
 - i. There is no one to designate.

C. Disclosure of existing relationships

1. Commission rules (Rule 6.5.A.) on broker's disclosure around confidentiality

- a. A broker designated as a listing or buyer's broker for a consumer must disclose that relationship to any other party to the transaction.
- b. Per Commission rules, this must be done in the following order:
 - i. First, **before eliciting or when accepting confidential information**
 - ii. Second, must happen in writing at first physical contact.
 - iii. Third, disclosure might happen on the phone verbally or orally if the consumer discloses things that are described as motivation
 - The broker then must make sure the consumer knows who they represent, and as such, this information may be given to the buyer or seller they are loyal to.
 - iv. **Disclosure must be in writing (approved form) and given by the broker to the member of the public. It does not have to be signed by the member of the public for the broker to be in compliance.**

2. Brokerage disclosure to seller (FSBO)

- a. Provides the required relationship disclosure for an unrepresented seller; can make them a customer
- b. Parallels the Disclosure to Buyer form

3. Brokerage disclosure to buyer

- a. Defines relationships and gives the buyer **written notice of the broker's representation of a seller**
- b. Form used to **create a customer status and to meet the transaction-broker disclosure requirements**

- c. Discloses the relationship between the buyer and the broker by checking a box
- d. This is a disclosure used to keep brokers in compliance with the law, not an agreement that would hold up in court or that states a job description
- e. Signatures
 - i. Affirms receipt of the disclosure
 - ii. **If not signed by the buyer, the broker signs, gives buyer a copy, and keeps one in the broker's file**

■ **The broker would be in compliance with Commission rules.**

4. Definitions of working relationships

- a. **This is not a mandatory form unless** a member of the public asks about a brokerage relationship the brokerage firm does not offer.
 - i. There are many brokerage firms that offer representation to only either a buyer or a seller, but not both.
 - ii. The brokerage firm's written office manual would define how the broker is to handle that situation
 - iii. The Definitions of Working Relationships form becomes mandatory when this situation occurs.

■ This form is mainly used as a tool to help brokers educate the public as to what brokerage relationships are available in Colorado.

- Agency and transaction-brokerage: both representation relationships

UNIT 8 REVIEW QUESTIONS

1. A designated transaction-broker must show loyalty to the client.
A. True
B. False
2. An agent's duties to the client include obedience, loyalty, and accountability.
A. True
B. False
3. Under Colorado Real Estate Law, all agency contracts must be in writing.
A. True
B. False
4. A designated broker working with the buyer and the seller in a transaction can work as a transaction-broker or a dual agent.
A. True
B. False
5. The designated broker owns any listing for which the broker is designated.
A. True
B. False
6. A designated transaction-broker acts as an advocate for the client.
A. True
B. False
7. A transaction-broker can provide advisement to the client.
A. True
B. False
8. An employing broker who designates one associate broker to work with the seller and another to work with a buyer has a brokerage relationship with the parties.
A. True
B. False
9. No consent of the principal is required for a designated broker to share confidential information with an employing broker.
A. True
B. False
10. A one-person firm can have a designated broker.
A. True
B. False

UNIT 8 REVIEW QUESTION ANSWERS

1. **B** The statement is false. Loyalty is a duty of an agent but not of a transaction-broker.
2. **A** The statement is true. An agent has the duties of obedience, loyalty, disclosure, confidentiality, accountability, and reasonable skill and care.
3. **A** The statement is true.
4. **B** The statement is false. Dual agency is not permitted in Colorado.
5. **B** The statement is false. The listing firm owns the listing.
6. **B** The statement is false. A transaction-broker cannot act as an advocate; only an agent can.
7. **A** The statement is true. Advisement is informing the client of possible choices without recommending a particular choice.
8. **B** The statement is false. The employing broker has no relationship; only the designated broker will have a brokerage relationship.
9. **B** The statement is false. Written consent was given in the listing or buyer representation agreement.
10. **B** The statement is false. The one person and the firm will be the representative for the seller or the buyer.

APPENDIX: SELF-SCORE ANSWER SHEETS

Colorado Exam Prep Sixth Edition Self-Score Answer Sheet State Portion—Broker

For the pre-test: Use this sheet to mark your answers as you take the test. Then grade your test and write the correct answer next to the questions you answered incorrectly. Add up your scores for each category and then add up your overall score. Be sure to have this answer sheet with you during the course.

Student Name: _____

Duties and Powers of CREC (1–2) (2 questions); Licensing Requirements (3–7) (5 questions)	Requirements Governing the Activities of Licensees (11 questions)	Additional Topics (7 questions)	Colorado Forms and Contracts (23 questions)
1. _____	8. _____	19. _____	26. _____ 39. _____
2. _____	9. _____	20. _____	27. _____ 40. _____
	10. _____	21. _____	28. _____ 41. _____
3. _____	11. _____	22. _____	29. _____ 42. _____
4. _____	12. _____	23. _____	30. _____ 43. _____
5. _____	13. _____	24. _____	31. _____ 44. _____
6. _____	14. _____	25. _____	32. _____ 45. _____
7. _____	15. _____		33. _____ 46. _____
Total correct: _____	16. _____	Total correct: _____	34. _____ 47. _____
	17. _____		35. _____ 48. _____
	18. _____		36. _____
	Total correct: _____		37. _____ Total correct: _____
			38. _____
Record Keeping and Trust Accounts (5 questions)	Closing and Settlement (10 questions)	Brokerage Relationships (11 questions)	
49. _____	54. _____	64. _____	
50. _____	55. _____	65. _____	
51. _____	56. _____	66. _____	
52. _____	57. _____	67. _____	
53. _____	58. _____	68. _____	
	59. _____	69. _____	
Total correct: _____	60. _____	70. _____	
	61. _____	71. _____	
	62. _____	72. _____	
	63. _____	73. _____	
	Total correct: _____	74. _____	
		Total correct: _____	

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1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____ 7. _____ Total correct: _____	8. _____ 9. _____ 10. _____ 11. _____ 12. _____ 13. _____ 14. _____ 15. _____ 16. _____ 17. _____ 18. _____ Total correct: _____	19. _____ 20. _____ 21. _____ 22. _____ 23. _____ 24. _____ 25. _____ Total correct: _____	26. _____ 27. _____ 28. _____ 29. _____ 30. _____ 31. _____ 32. _____ 33. _____ 34. _____ 35. _____ 36. _____ 37. _____ 38. _____ Total correct: _____
Record Keeping and Trust Accounts (5 questions)	Closing and Settlement (10 questions)	Brokerage Relationships (11 questions)	
49. _____ 50. _____ 51. _____ 52. _____ 53. _____ Total correct: _____	54. _____ 55. _____ 56. _____ 57. _____ 58. _____ 59. _____ 60. _____ 61. _____ 62. _____ 63. _____ Total correct: _____	64. _____ 65. _____ 66. _____ 67. _____ 68. _____ 69. _____ 70. _____ 71. _____ 72. _____ 73. _____ 74. _____ Total correct: _____	

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7. _____	15. _____		33. _____ 46. _____
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	17. _____		35. _____ 48. _____
	18. _____		36. _____
	Total correct: _____		37. _____ Total correct: _____
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	59. _____	69. _____	
Total correct: _____	60. _____	70. _____	
	61. _____	71. _____	
	62. _____	72. _____	
	63. _____	73. _____	
	Total correct: _____	74. _____	
		Total correct: _____	

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Notes